

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

IKON OFFICE SOLUTIONS, INC.

PLAINTIFF,

vs.

MARTHA SOUTHERLAND AND
ABS BUSINESS SYSTEMS, INC.,

DEFENDANTS.

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CIVIL ACTION NO. 2:05CV959-WKW

**DESIGNATION OF EXPERTS BY PLAINTIFF IKON OFFICE SOLUTIONS, INC.
AND, FURTHER, ALTERNATIVE UNOPPOSED MOTION FOR CLARIFICATION
AND/OR EXTENSION OF EXPERT REPORT DEADLINES**

Plaintiff IKON Office Solutions, Inc. ("Plaintiff" or "IKON"), by and through its undersigned counsel, Duane Morris LLP, hereby submits its designation of experts, pursuant to the Court's Order of November 29, 2006. In addition, for purposes of clarity and logic, and with the consent of Defendants, IKON further respectfully files its Alternative Unopposed Motion for Clarification and/or Extension of Expert Report Deadlines to allow for the submission of expert reports *after* the completion of critical document production and depositions of Defendants' and Plaintiff's key witnesses - - under the terms and schedule to which the parties recently agreed (on January 11, 2007) in order to resolve their outstanding discovery disputes (without need of the court's intervention) in this proceeding.

I. DESIGNATION OF EXPERTS

Pursuant to the Court's Order of November 29, 2006 and Rule 26(a)(2)(a) of the Federal Rules of Civil Procedure, IKON hereby identifies the following persons who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence:

InfoTrends Cap Ventures
(and, more specifically, its employees under the supervision of Charles Corr)
97 Libbey Industrial Parkway
Suite 300
Weymouth, Massachusetts 02189
Phone: 781.616.2100

Richard A. Roper, Ph.D.
Forensic Document Examinations
7956 Vaughn Road
Suite 141
Montgomery, Alabama 36116
Phone: 334.356.7856

Pursuant to the Court's Order of November 29, 2006, IKON hereby designates the following persons who may be used at trial to present evidence under Rule 701 of the Federal Rules of Evidence:

Jim Morrissey
Vice President and General Manager for Plaintiff
IKON Office Solutions, Inc.
640 Freedom Business Center
King of Prussia, Pennsylvania 19406
c/o counsel to Plaintiff

Curtis Croft
Vice President/General Manager of Plaintiff's
Arkansas/Alabama/Mississippi/Memphis and Nashville,
Tennessee/Pensacola, Florida Area
IKON Office Solutions, Inc.
2200 Riverchase Ctr.
Hoover, Alabama 35244
c/o counsel to Plaintiff

Michael D. Johnson
Director of Sales for Plaintiff's
Alabama and Arkansas Areas
IKON Office Solutions, Inc.
2200 Riverchase Ctr.
Hoover, Alabama 35244
c/o counsel to Plaintiff

Walter N. Jespersen
Sales Manager for Plaintiff's Birmingham/Montgomery/Tuscaloosa Areas
IKON Office Solutions, Inc.
2200 Riverchase Ctr.
Hoover, Alabama 35244
c/o counsel to Plaintiff

Plaintiff reserves its right to supplement the foregoing as discovery continues.

**II. FURTHER ALTERNATIVE UNOPPOSED MOTION TO CLARIFY/EXTEND EXPERT
REPORT DEADLINES**

On November 29, 2006, the Court entered an Order, upon the parties' Joint Motion, ordering that the "deadline for Plaintiff's designation of experts is EXTENDED from **November, 27, 2006 to January 11, 2007.**" In accordance with this Order, Plaintiff IKON has designated the experts whose identities are disclosed hereinabove.

Although the express terms of the November 29, 2006 Order do not require Plaintiff to provide *actual* expert reports by January 11, 2007, there exists enough ambiguity that, in prudence, requires Plaintiff to move for clarification or, alternatively, for the sake of logic, economy and fairness, the extension of any premature deadline for the parties' actual *submission* of expert reports.

To the extent that the Court clarifies or interprets its prior extensions, orders and/or the applicable rules to impose a requirement that Plaintiff's actual expert report be submitted by January 11, 2007, Plaintiff IKON hereby moves - - with Defendants' consent - - for an extension of time until February 14, 2007 to provide Defendants with such expert reports. The requested extension is necessary because previously-scheduled depositions have been postponed, as a result of the parties' disputes, and ultimately renegotiated and rescheduled by the January 11, 2007 agreement of the parties, to January 30 and 31 and February 2, 2007. The agreed postponement was necessary, in the final analysis, to accommodate the parties' resolution of

their outstanding discovery disputes, the parties' agreement concerning the production of critically important discovery documents prior to depositions (including, but not limited to, sales invoices, contracts, proposals and communications between Defendants and Plaintiff's customers; all of which are necessary to the full and fair completion of any fully informed and competent expert opinion), and accommodation of Defendants' position that the deposition of Plaintiff's representative be scheduled to take place prior to the deposition of Defendants (see, e.g., D.I. 24, 25).

In turn, the documents and deposition testimony the parties have agreed to produce are all critical both to Plaintiff's calculation and explanation of its damages and to the completeness, accuracy, internal logic, and trend lines critical to any expert opinion in this matter. Accordingly, Plaintiff IKON respectfully submits, in the alternative and with Defendants' consent, that a modest extension of the expert report disclosure deadline would be necessary (for both parties) and warranted to avoid any prejudice that would result from the imposition of premature deadlines prior to obtaining this vital current information and critical depositions of the parties themselves that the parties have recently (on January 11, 2007) agreed to produce and conduct.¹

Accordingly, with Defendants' consent, Plaintiff respectfully requests that the deadline for Plaintiff's submission of its expert reports shall be clarified and/or extended to be February 14, 2007, and that the deadline for Defendants' expert reports be correspondingly extended to

¹ If the November 29, 2006 Order requires Plaintiff's expert reports to be provided on January 11, 2007 (prior to the scheduled depositions), then the Order requires that Defendants' expert reports are due on February 12, 2007 (ten days after the last scheduled deposition). Plaintiff consents to and joins Defendants' request for an extension of this deadline to February 21, 2007 (two days prior to the pre-trial conference) for Defendants to provide its expert reports, if any.

February 21, 2007.

Respectfully submitted,

/s/ Shannon Hampton Sutherland

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*Attorneys for Defendants ABS Business
Systems LLC and Martha Southerland*

CERTIFICATE OF SERVICE

I, Shannon Hampton Sutherland, hereby certify that a true and correct copy of the foregoing Designation of Experts by Plaintiff IKON Office Solutions, Inc. and, further, IKON's Alternative Motion for Clarification and/or Extension of Expert Report Deadlines, has been served this 11th day of January, 2007, upon counsel of record as follows:

Via ECF to:

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/s/ Shannon Hampton Sutherland
Shannon Hampton Sutherland